

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JEANNE C. WERNER, State Bar No. 93170  
Deputy Attorney General  
3 California Department of Justice  
1515 Clay Street, 21<sup>st</sup> Floor~P.O. Box 70550  
4 Oakland, CA 94612-0550  
Telephone: (510) 622-2226~Facsimile: (510) 622-2121

5 Attorneys for Complainant

6 **BEFORE THE**  
7 **BOARD OF ACCOUNTANCY**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **KPMG LLP**  
12 **355 South Grand Avenue, Suite 2000**  
13 **Los Angeles, CA 90071**  
14 **CPA Partnership Certificate No. PAR 157**

15 Bryan E. Palbaum  
16 800 South Shamrock Avenue  
17 Monrovia, CA 91016  
18 Certified Public Accountant  
19 Certificate No. CPA 51655

20 John Ming Wong  
21 6252 Forester Drive  
22 Huntington Beach, CA 92648  
23 Certified Public Accountant  
24 Certificate No. CPA 45405

25 Kenneth B. Janeski  
26 355 So. Grand Avenue  
27 Los Angeles, CA 90071  
28 Certified Public Accountant  
Certificate No. CPA 20116

David Akio Hori  
400 E. Van Buren Street  
Phoenix, AZ 85004  
Certified Public Accountant  
Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.  
540 San Geronio Street  
San Diego, CA 92106  
Certified Public Accountant  
Certificate No. CPA 14338,

Respondents.

Case No. AC-2005-13 (KPMG LLP)

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**KPMG LLP**  
**CPA Partnership Certificate No. PAR 157**

In the interest of a prompt settlement of this matter, consistent with the public interest and

1 the responsibilities of the California Board of Accountancy of the Department of Consumer  
2 Affairs (the "Board"), the parties hereby agree to the following Stipulated Settlement and  
3 Disciplinary Order (the "Stipulated Settlement") which will be submitted to the Board for  
4 approval and adoption as the final disposition of the Accusation filed herein as it relates to  
5 KPMG LLP (Case No. 2005-13).

#### 6 **PARTIES AND JURISDICTION**

7 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of  
8 Accountancy (Board). She brought an Accusation in Case Nos. AC-2005-13 (KPMG LLP),  
9 AC-2005-14 (Palbaum); AC-2005-15 (Wong); AC-2005-16 (Janeski); and AC-2005-17 (Hori)  
10 and AC-2005-20 (Carroll) solely in her official capacity and is represented in this matter by Bill  
11 Lockyer, Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney  
12 General.

13 2. Respondent KPMG LLP<sup>1</sup> is acting, in this proceeding, through Philip R.  
14 Schimmel, KPMG's Managing Partner in Los Angeles, whose address is 355 So. Grand Avenue,  
15 Los Angeles, CA 90071. Mr. Schimmel, a KPMG partner and Board licensee, has been  
16 designated to act on behalf of KPMG to enter into this agreement on behalf of the firm.<sup>2</sup> KPMG  
17 LLP is represented in this proceeding by Joseph I. Loonan, Deputy General Counsel, of KPMG  
18 LLP's New York Office of the General Counsel.

19 3. The term "Accusation" refers to the Accusation on file in Board case Nos. AC-  
20 2005-13 through AC 2005-17 and AC-2005-20, but as used herein refers only to the charges and  
21 allegations against Respondent KPMG. This Stipulated Settlement addresses all charges and  
22 matters in the Accusation as they relate to Respondent KPMG LLP. This stipulation does not  
23 purport to deal with other respondents. This stipulation bears Board Case No. 2005-13.

24 4. The Accusation was filed before the Board and is currently pending against  
25

---

26 1. KPMG LLP is also referred to herein as KPMG or Respondent.

27 2. Mr. Schimmel is not otherwise involved in these proceedings and was not involved in  
28 the Gemstar audits.

Respondent KPMG. The Accusation and all other statutorily required documents were properly served on all respondents, and a timely Notice of Defense was filed on behalf of Respondent KPMG contesting the Accusation as it pertains to KPMG. A copy of the Accusation is attached as Exhibit A and incorporated herein by reference.

5. The parties stipulate that KPMG's license history is accurately set forth in paragraphs 2 and 3 of the attached Accusation, except that the registration is currently renewed through February 28, 2007, and that the Board has jurisdiction in this matter.<sup>3</sup>

## WAIVERS & CONTINGENCY

6. Acting as KPMG's representative as set forth in paragraph 2 above, Mr. Schimmel understands and has carefully read, and has fully discussed with counsel, the allegations pertaining to KPMG in the Board's Accusation. Mr. Schimmel has also carefully read and fully discussed this Stipulated Settlement with counsel, and understands the provisions and effects of this Stipulated Settlement and Disciplinary Order. Mr. Schimmel is fully aware of KPMG's legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against the partnership; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws. Mr. Schimmel, on behalf of KPMG voluntarily, knowingly, and intelligently waives and gives up each and every one of these rights.

7. It is understood that, in authorizing Mr. Schimmel to sign this stipulation on behalf of KPMG rather than further contesting the Accusation, KPMG is consenting to the adoption of this Stipulated Settlement as the Board's Decision, enabling the Board to issue the following order without further legal process. Respondent KPMG represents that no tender,

3. The terms “partnership registration” and “license” refer to the authority granted to KPMG by the Board to practice accountancy in California, and the terms are used interchangeably herein.

1 offer, promise, threat or inducement of any kind whatsoever have been made by the Board or any  
2 member, officer, agent or representative thereof in consideration of this offer or otherwise to  
3 induce it to so consent.

4 8. This stipulation shall be subject to approval by the Board. Respondent  
5 understands and agrees that counsel for Complainant and the staff of the Board may  
6 communicate directly with the Board regarding this Stipulated Settlement, without notice to or  
7 participation by Respondent or its counsel. By signing the stipulation, Respondent's  
8 representative understands and agrees that the firm may not withdraw its agreement or seek to  
9 rescind the stipulation prior to the time the Board considers and acts upon it.

10 9. If the Board does not adopt this stipulation as its Decision and Order, the  
11 Stipulated Settlement shall be withdrawn. It shall be of no force or effect, except for this  
12 paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action between  
13 the parties, and shall not be relied upon or introduced in any disciplinary, or other, action or  
14 proceeding by either party hereto. In the event that the Stipulated Settlement is not adopted,  
15 nothing recited herein shall be construed as a waiver of respondent's right to a hearing on the  
16 truth of the Accusation's charges, or a waiver of any other right, including those rights expressly  
17 waived in the Stipulated Settlement. Communications pursuant to this paragraph, and  
18 consideration of this matter, shall not disqualify the Board or other persons from future  
19 participation in this or any other matter affecting Respondents. Respondent agrees that should  
20 the Board reject the Stipulated Settlement and if this case proceeds to hearing, Respondent will  
21 assert no claim that the Board was prejudiced by its review and discussion of the Stipulated  
22 Settlement or of any records related hereto. In the event that the Stipulated Settlement is not  
23 adopted, Respondent is not precluded from filing a Special Notice of Defense within fifteen days  
24 of his counsel being notified in writing that the Stipulated Settlement was not adopted.

25 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

26 10. The parties acknowledge that the basis for the Accusation's alleged violation of  
27 California Business and Professions Code (the "Code") Section 5100(*l*) is the decision and  
28 Order entered by the United States Securities and Exchange Commission ("SEC" or

1 "Commission") on October 20, 2004, in its case *In the Matter of KPMG LLP, Bryan E. Palbaum,*  
2 *CPA, John M. Wong, CPA, Kenneth B. Janeski, CPA, David A. Hori, CPA, Respondent*  
3 (Administrative Proceeding File No. 3-11714).<sup>4</sup> As relevant herein, KPMG, without admitting or  
4 denying the findings therein, except as to the Commission's jurisdiction over them and the  
5 subject matter of the Commission's proceedings, consented, effective October 20, 2004, to the  
6 entry of an *Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the*  
7 *Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions* ("Order").<sup>5</sup>  
8 A copy of the SEC's Order is attached as Exhibit B and incorporated herein by reference.

9 11. Respondent KPMG LLP admits that, as relevant herein, KPMG audited or  
10 reviewed Gemstar's annual and quarterly financial statements from the quarter ended September  
11 30, 1999, through the quarter ended March 31, 2002. KPMG further admits the matters alleged  
12 in paragraphs 17 through 22, 36, and 41 in the Accusation (Exhibit A hereto) as they pertain to  
13 KPMG. Respondent KPMG agrees that its Partnership Registration Number 157 is subject to  
14 discipline under Business and Professions Code Section 5100 (I) and Section 5101 as set forth in  
15 the Accusation, and agrees to be bound by the Board's imposition of discipline as set forth in the  
16 disciplinary order below. Respondent further agrees not to take any action or make any public  
17 statement that creates, or tends to create, the impression that any of the matters set forth in the  
18 Stipulated Settlement, Order and Decision are without a factual basis. It is not the intent of the  
19 board, however, to prevent Respondent's partners, employees, or former employees from  
20 testifying or responding truthfully in civil litigation or regulatory matters, including where  
21 required to do so by any court of law or regulatory body.

22 12. The parties understand and agree that facsimile copies of this Stipulated  
23

---

24 4. The Order is also filed as "Securities Exchange Act of 1934 Release No. 50564 /  
25 October 20, 2004" and "Accounting And Auditing Enforcement Release No. 2125 / October 20,  
26 2004."

27 5. In that Order, KPMG was found to have violated the Commission's Rule 102(e) -  
28 unprofessional conduct, including violations related to the exercise of due professional care and  
professional skepticism; evidential matter; and inappropriate reliance on management  
representations, as well as criticism of a firm policy regarding consultation on restatements.

1 Settlement, including facsimile signatures thereto, shall have the same force and effect as the  
2 originals.

3 13. The Board, in accepting this stipulation, is foregoing its right to institute further  
4 disciplinary proceedings, including filing charges in addition to the charges contained in the  
5 Accusation, against KPMG LLP's partnership license based upon conduct arising out of its  
6 audits of the financial statements of Gemstar for the period covered in the Accusation.

7 14. The Board, in accepting this stipulation, is foregoing its right to institute further  
8 disciplinary proceedings, including filing charges in addition to the charges contained in the  
9 Accusation, against Respondent's license based upon conduct arising out of the audits and  
10 reviews of the financial statements of Gemstar for the period covered in the Accusation.

11 However, in the event that Case Nos. AC-2005-13 through AC-2005-17, and AC-2005-20, are  
12 not resolved effective April 1, 2005, the Board reserves the right to initiate or continue  
13 investigations and administrative proceedings related to the conduct of Board licensees who may  
14 have been involved in the acts or omissions underlying the SEC's allegations and Order as well  
15 as any other violations of the Accountancy Act which may have occurred by Board licensee(s) in  
16 the Gemstar engagements. In those circumstances, Respondent voluntarily agrees to fully  
17 cooperate with, and, upon reasonable notice, make its partners and employees available to the  
18 Board and its designees, without the necessity of a subpoena, in any investigation of other Board  
19 licensees regarding the Gemstar engagements, including, but not limited to, the providing of  
20 interviews, statements, affidavits, declarations, and any other documents or other types of  
21 information requested, consistent with the requirements of confidentiality and law. Respondent,  
22 if called to do so, shall cooperate with the Board and shall, upon reasonable notice, testify at any  
23 subsequent administrative or civil proceeding if asked to do so by the Board. Finally, this  
24 provision shall not have the effect of limiting in any way the Board's monitoring of Respondent's  
25 compliance with the terms of this order.

26 15. It is acknowledged by the Complainant that Respondent KPMG LLP is admitting,  
27 and assuming responsibility for, its conduct at an early stage in the proceedings. Complainant  
28 acknowledges Respondent's expressed intention to move forward in a cooperative manner with

1 the Board, as it did with the Securities and Exchange Commission. Complainant acknowledges  
2 that Respondent KPMG LLP has been cooperative in these proceedings. Respondent has  
3 undertaken the responsibility for payment of all the Board's reasonable costs (pursuant to Code  
4 Section 5107) for all respondents in this matter, and has voluntarily assumed the cost of the  
5 practice investigation called for in the Order which follows.

6 16. The Stipulation is founded upon Respondent's admission in paragraph 11, as well  
7 as upon Respondent's representations concerning its firm-wide remedial efforts undertaken even  
8 before the matter with the Commission was resolved. KPMG asserts that it has already  
9 implemented significant organizational steps designed to significantly reduce the likelihood that  
10 the violations of the origin, nature and duration found by the SEC will recur. Respondent has  
11 submitted a letter making representations regarding its undertakings, which letter is offered by  
12 Respondent as evidence of its rehabilitation since March 2002, and also offered in mitigation of  
13 penalty, to be considered along with the circumstances pled in Accusation No. AC-2005-13.  
14 Respondent's letter is incorporated herein as though fully set forth, and a true and correct copy of  
15 Respondent's letter is attached hereto as Exhibit C ("KPMG LLP Letter").

16  
17 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations,  
18 the parties agree that the Board may, without further notice or formal proceeding, issue and enter  
19 the following Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Partnership Registration Number No. 157, issued  
22 to Respondent KPMG LLP, is suspended for a period of thirty (30) days. However, the  
23 suspension is stayed and Respondent's license is placed on probation for three (3) years, subject  
24 to the following terms and conditions.

25 1. **Comply With Probation.** Respondent shall fully comply with the terms and  
26 conditions of the probation imposed by the Board and shall cooperate fully with representatives  
27  
28

1 of the Board<sup>6</sup> in its monitoring and investigation of the Respondent's compliance with these  
2 probation terms and conditions. Respondent shall designate a contact person or persons,  
3 including at a minimum a Board licensee with a current, active license in California and whose  
4 primary office is in California, who shall represent Respondent during the period of probation.  
5 Failure to complete the probationary requirements shall automatically extend the period of  
6 probation and the Board shall have continuing jurisdiction of this matter until the condition is  
7 satisfied.

8       2.       **Compliance with the SEC Order.** Respondent shall fully comply with the SEC  
9 order adopting the decision In the Matter of KPMG et al, Securities and Exchange Commission  
10 File No. 3-11714 ("SEC Order") and shall fully communicate with the Board or its designees  
11 concerning its compliance as part of its obligation to report to the Board during the probationary  
12 period.

13       3.       **Practice Investigation.** Respondent shall be subject to, and shall permit,  
14 practice investigation of the Respondent's professional practice. Such a practice investigation  
15 shall be conducted by representatives of the Board at Respondent's expense. Respondent will be  
16 timely notified regarding the practice investigation. Periodically, the Board or its designee will  
17 present Respondent with a certified statement of costs to date, and Respondent shall pay those  
18 costs within thirty days thereafter. If costs are billed after the probationary period is terminated,  
19 the obligation to pay the costs shall continue but the probation shall not be extended thereby.

20       4.       **Cost Reimbursement.** Respondent shall pay to the Board pursuant to Business  
21 and Professions Code Section 5107 its reasonable costs of investigation in this and in related  
22 matters (that is, Case Nos. AC-2005-13 through AC-2005-17 and AC-2005-20). The costs  
23 include the Board's costs involving the investigation or prosecution of conduct in the Gemstar  
24 audits by KPMG personnel who are Board licensees, and may include costs incurred in these  
25

---

26       6. The term Board as used hereinafter in these probationary conditions may refer to the  
27 Board or its designees, including the Complainant, the Chief of Enforcement, other Board staff,  
28 Deputy Attorneys General, consultants, etc. as designated by the Board, the Complainant,  
and/or the Board's Chief of Enforcement.



1 matters if they are not yet concluded. Respondent is not obligated to pay costs in related matters  
2 which accrue after 90 days from the effective date of this Order. This provision does not create a  
3 right by other parties to claim reimbursement or an offset for Board costs under this agreement.

4 Beginning thirty days from the effective date of this order, and every thirty days  
5 thereafter, the Board will present Respondent with a certified statement of qualifying costs to  
6 date, and Respondent shall pay those costs within thirty days thereafter. If the accrual of  
7 qualifying costs extends beyond the period of probation, the obligation to pay the costs shall  
8 continue but the probationary probation shall not be extended thereby.

9 **5. Submit Written Reports and Personal Appearances.** Respondent shall  
10 submit such written reports, declarations, and verification of actions to the Board, under penalty  
11 of perjury, as are required relative to Respondent's compliance with all the terms and conditions  
12 of probation. Respondent shall immediately execute all release of information forms as may be  
13 required by the Board or its representatives to confirm Respondent's compliance with the terms  
14 and conditions of probation. Respondent's representatives shall, during the period of probation,  
15 appear in person at interviews/meetings as directed by the Board or its designated  
16 representatives, provided such notification is accomplished in a timely manner.

17 **6. Dissemination of the Stipulated Settlement.** Within 15 days of the Board's  
18 adoption of the Stipulated Settlement and its filing as a public document at the Board's office,  
19 Respondent shall disseminate the Stipulated Settlement and Disciplinary Order to all KPMG  
20 professional personnel officed in California and shall confirm such dissemination in writing to  
21 the Board.

22 **7. Cooperate with Board.** Respondent will cooperate with Board investigations as  
23 provided in paragraph 14 above.

24 **8. Obey All Laws.** Respondent shall obey all federal, California, other  
25 states' and local laws, including those rules relating to the practice of public accountancy in  
26 California.

27 **9. Comply With Citations.** Respondent shall comply with all final orders resulting  
28 from citations issued by the Board of Accountancy.

10. **Petition for Reduction of Penalty.** The Board acknowledges the Respondent's right, under Business and Professions Code Section 5115(b), to petition the Board for a reduction of penalty after a period of not less than one year has elapsed from the effective date of this decision.

11. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Violation(s) of probation may result in the Board's charges being reinstated and/or additional charges being filed, in which event neither the waivers contained in this Stipulated Settlement (under "Waivers and Contingency") nor the limitations on the Board shall have any effect as to the Gemstar matters, that is, the Board may reinstate, augment, or supplement the charges in the Accusation, and KPMG will be entitled to fully contest any such charges at an administrative hearing. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Acts or omissions by KPMG or its auditing professionals occurring on or before the date of the entry of this Order shall not provide a basis for the institution by the Complainant herein of a "Petition to Revoke Probation" but such acts or omissions may provide the basis for filing disciplinary charges against Respondent's registration.


12. **Completion of Probation.** Probation will be automatically extended until the conditions set forth herein are completed to the satisfaction of the Board or its designee. Upon successful completion of probation, Respondent's license will be fully restored.

## ACCEPTANCE

On behalf of KPMG LLP, and as its designated agent for purposes of this action and stipulation, I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it as necessary within KPMG LLP and with Joseph Loonan. I understand the stipulation and the effect it will have on Partnership Registration Number 157. On behalf of KPMG LLP, I enter into this Stipulated Settlement and Disciplinary Order voluntarily,

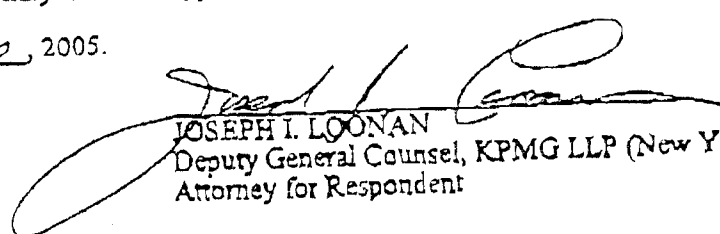
1 knowingly, and intelligently, and agree that the partnership is thereby bound by the Decision and  
2 Order of the California Board of Accountancy.

3 DATED: March 10, 2005.

4   
5 PHILIP R. SCHIMMEL, CPA  
6 for  
7 KPMG LLP  
Respondent

8 I have read and have fully discussed, with KPMG management and with Mr.  
9 Schimmel, the terms and conditions and other matters contained in the above Stipulated  
10 Settlement and Disciplinary Order. I approve its form and content.

11 DATED: March 10, 2005.


12   
13 JOSEPH I. LOONAN  
Deputy General Counsel, KPMG LLP (New York Office)  
14 Attorney for Respondent

15 ENDORSEMENT


16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Board of Accountancy of the Department of Consumer  
18 Affairs.

19 DATED: March 10, 2005

20 BILL LOCKYER, Attorney General  
21 of the State of California

22   
23 JEANNE C. WERNER  
24 Deputy Attorney General  
Attorneys for Complainant

25  
26  
27 DOJ Document ID Number 03541110-SF331201  
28 kpmg stipulation

 SF KPMG 2005-13 SF 2004900316

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. **AC-2005-13 (KPMG LLP)**

**KPMG LLP**  
**CPA Partnership Certificate No. PAR 157**

Bryan E. Palbaum  
CPA Certificate No. CPA 51655

John Ming Wong  
CPA Certificate No. CPA 45405

Kenneth B. Janeski  
CPA Certificate No. CPA 20116

David Akio Hori  
CPA Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.  
CPA Certificate No. CPA 14338

Respondents.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 1, 2005.

It is so ORDERED on March 25, 2005.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS